

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

| | | |
|--------------------|---|--------------------------------|
| MARCUS D. MCQUEEN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No.: 2:18-cv-2019-MHH-GMB |
| |) | |
| MIKE HALE, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION

On December 13, 2019, the magistrate judge assigned to this case filed a report in which he recommended that the Court dismiss this § 1983 action without prejudice pursuant to 28 U.S.C. § 1915A(b)(1) for failing to state a claim upon which relief may be granted. (Doc. 9). The magistrate judge advised Mr. McQueen of his right to file specific written objections within 14 days. (Docs. 9, 11). The Court has not received objections from Mr. McQueen.

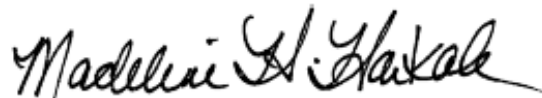
A district court “may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court reviews legal conclusions in a report *de novo* and reviews for plain error factual findings to which no objection is made. *Garvey v. Vaughn*, 993 F.2d 776, 779 n. 9 (11th Cir. 1993); *see also LoConte v. Dugger*, 847 F.2d 745, 749 (11th Cir. 1988); *Macort v. Prem, Inc.*, 208 Fed. Appx. 781, 784 (11th Cir. 2006).

Having reviewed Mr. McQueen's original complaint and his amended complaint (Docs. 1, 7) and the magistrate judge's report and recommendation, based on *Alfred v. Bryant*, 378 Fed. Appx. 977 (11th Cir. 2010), the Court will dismiss Mr. McQueen's Eighth Amendment claim without prejudice. The Court also will dismiss Mr. McQueen's Fourteenth Amendment claim for failure to plead sufficient facts to support a Fourteenth Amendment claim.¹

Therefore, the Court adopts the magistrate judge's report and accepts his recommendation. In accordance with 28 U.S.C. § 1915A(b), the Court will dismiss this action without prejudice for failing to state a claim upon which relief can be granted.

The Court will enter a separate final judgment.

DONE this 29th day of January, 2020.

A handwritten signature in black ink, reading "Madeline H. Haikala". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

¹ In his amended complaint, Mr. McQueen indicated that he wished to assert a Fourteenth Amendment due process claim. (Doc. 7, p. 3). In his original complaint, Mr. McQueen asserted a Fourteenth Amendment equal protection claim and an Eighth Amendment claim. (Doc. 1, pp. 3, 10-12). Because Mr. McQueen is proceeding *pro se* (without counsel), the Court has read his original and amended complaint together. The Court notes that in his original complaint, Mr. McQueen indicated that he received a mattress a few days before he left custody. (Doc. 1, p. 5).